

In an apparent attempt to compensate for the failings of the prior art, the Examiner makes an unsubstantiated argument that “[i]t would have been obvious to one having ordinary skill in the art at the time of the invention was made to provide a report to the commercial entity. This would aid the commercial entity in knowing how well-received their game is.”⁴³ Appellants respectfully disagree.

Significantly, neither Guyett nor McIntyre provides any indication whatsoever of providing a statistical report to advertisers as recited in claims 33 and 67. Guyett only collects data associated with consumer's interactions to determine whether a computer payoff or prize is due the consumer,⁴⁴ while McIntyre teaches the antithesis of statistical reporting to advertisers. As discussed previously, McIntyre only counts the occurrences of sponsor ads provided to a game. More importantly, McIntyre teaches those skilled in the art *not* to contact the advertisers other than for billing purposes.⁴⁵ It's no wonder, then, that neither of these references discloses Appellants' claimed steps of generating and providing the statistical report.

For at least the foregoing reasons, claims 38-41 and 43 are in condition for allowance. However, the limitations specific to claims 38-41 and 43 provide independent support for the proposition that these claims are allowable.

As to the limitations specific to claims 38-41 and 43, the Examiner admits that Guyett “doesn't teach the providing of a next of the plurality of puzzles based on consumer performance.”⁴⁶ The Examiner then proffers in the final Office action:

It would have been obvious to one having ordinary skill in the art at the time the invention was made to select a puzzle for the user based on performance of the user. This would give the player a greater sense of satisfaction.⁴⁷

In conclusion, the Examiner proffers that claims 38-41 and 43 are unpatentable in view of Guyett combined with McIntyre combined with Forrest. Appellants respectfully disagree.

⁴³ September 6, 2006 Office action, p. 7.

⁴⁴ U.S. Patent No. 6,764,395 to Guyett, col. 10, lines 17-20, as cited by the September 6, 2006 Office action.

⁴⁵ U.S. Pub. Patent App. No. 2003/0191690 to McIntyre et al., ¶ [0043].

⁴⁶ September 6, 2006 Office action, p. 9.

⁴⁷ September 6, 2006 Office action, p. 9.